

Message Text

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ACTION EA-14

INFO OCT-01 ISO-00 AID-20 CIAE-00 COME-00 EB-11 FRB-02

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CIEP-02 LAB-06 SIL-01 OMB-01 NSC-07 SS-20 STR-08

CEA-02 L-03 DRC-01 /132 W

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R 290530Z JUN 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4793

INFO AMEMBASSY MOSCOW

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MOSCOW FOR L, ALDRICH

E.O. 11652: N/A

TAGS: EGEN, EFIN, ETRD, RP

SUBJECT: ECONOMIC NEGOTIATIONS

1. FOLLOWING BRIEFING JUNE 26 BY GOP BOARD OF INVESTMENTS, ECONDEL ATTEMPTED REFORMULATION ARTICLE 13 US DRAFT TREATY TO PROVIDE FALLBACK TO PRESENT LANGUAGE WHICH WOULD ACCORD BETTER WITH EXISTING PHILIPPINE LAW WHILE, AT THE SAME TIME, PROVIDING GREATER PROTECTION FOR US INVESTMENT THAN PREVIOUSLY APPROVED FALLBACK POSITION (ALTERNATE ARTICLE 13).

2. PRINCIPAL NEW FEATURE WOULD BE PROVISION PERMITTING SCREENING OF PROPOSED INVESTMENTS PERMITTING INVESTMENT TO BE DISAPPROVED IF NECESSARY TO PREVENT MONOPOLIES OR EXCESS CAPACITY WITHIN AN INDUSTRY.

3. IN RETURN, US WOULD SEEK EXPLICIT TREATY RIGHT TO HIRE ALIENS FOR MANAGERIAL AND TECHNICAL POSITIONS, AND ASSURANCE THAT NO REQUIREMENT OF FILIPINIZATION WOULD BE LIMITED OFFICIAL USE

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IMPOSED ON US COMPANIES WHICH CHOSE TO FOREGO INCENTIVES

UNDER APPLICABLE INCENTIVES LAWS.

4. BASIC OBJECTIVES IN AREAS OF ESTABLISHMENT GOING BEYOND
MFN IN ESTABLISHMENT AREA WOULD BE:

A. CONTINUATION OF RIGHT OF US FIRMS TO HIRE ALIEN
MANAGERIAL AND TECHNICAL PERSONNEL, IRRESPECTIVE OF
LAWS LIMITING OR PROHIBITING SUCH EMPLOYMENT. US COULD
ACCEPT TIME LIMITATION ON PARTICULAR EMPLOYMENTS (5 YEARS
CURRENTLY PROVIDED IN PHIL INVESTMENT INCENTIVES LAW).

B. RECOGNITION OF RIGHT OF US FIRMS, ON EQUAL BASIS
WITH PHIL FIRMS, TO REGISTRATION OF INVESTMENT IN PRE-
FERRED, NON-PIONEER AREAS OF INVESTMENT, WITHOUT PRESENT
THREE-YEAR WAITING PERIOD. THIS WOULD NOT REQUIRE AMENDMENT
OF PHIL LAW, UNLESS ACCESS TO INCENTIVES WERE ALSO REQUESTED
DURING FIRST THREE YEARS.

C. AFFIRMANCE OF RIGHT OF US FIRMS TO OPERATE IN PREFERRED
AND PIONEER AREAS WITHOUT DUTY TO FILIPINIZE, SO LONG AS THEY
DO NOT CHOOSE TO APPLY FOR GOVERNMENT INCENTIVES.

D. AFFIRMANCE OF RIGHT OF US FIRMS TO UTILIZE CAPITAL
MARKETS IN PHILIPPINES ON A NONDISCRIMINATORY BASIS. IF
NECESSARY TO CONFORM TO EXPECTED GOP CENTRAL BANK REGULATIONS,
WE WOULD BE PREPARED TO EXCLUDE INITIAL INVESTMENT FROM
THIS PROVISION.

5. TEXT NEW PROPOSAL FOLLOWS:

QUOTE

ARTICLE 13. ESTABLISHMENT AND OPERATION OF ENTERPRISES

1. EACH PARTY, RECOGNIZING THE CONTRIBUTION WHICH MAY
BE MADE TO THE DEVELOPMENT AND EXPANSION OF THEIR RESPECTIVE
ECONOMIES BY PRIVATE DIRECT INVESTMENT, SHALL ENDEAVOR TO
FACILITATE INVESTMENTS BY NATIONALS AND COMPANIES OF THE
OTHER PARTY, SUBJECT TO THE FURTHER PROVISIONS OF THIS CHAPTER.

2. EACH PARTY RESERVES THE RIGHT TO LIMIT THE EXTENT
TO WHICH ALIENS MAY ESTABLISH, ACQUIRE INTERESTS IN, OR
CARRY ON ENTERPRISES ENGAGED WITHIN ITS TERRITORIES IN
THE MASS MEDIA AND TELECOMMUNICATIONS, AIR, LAND OR WATER
TRANSPORT, THE FURNISHING OF ELECTRICITY, WATER AND GAS,
TRUST FUNCTIONS, BANKING INVOLVING DEPOSITORY FUNCTIONS,
RETAIL TRADE, OR THE ACQUISITION, OWNERSHIP, OR EXPLOITATION
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OF LAND OR OTHER NATURAL RESOURCES. WITH RESPECT TO ANY
SUCH LIMITATIONS, EACH PARTY SHALL ACCORD TO NATIONALS AND
AND COMPANIES OF THE OTHER PARTY TREATMENT NO LESS FAVOR-
ABLE THAN THAT ACCORDED TO NATIONALS AND COMPANIES OF ANY
THIRD COUNTRY.

3. EACH PARTY RESERVES THE RIGHT TO LIMIT THE EXTENT
TO WHICH ALIENS MAY ESTABLISH OR ACQUIRE INTERESTS IN
ENTERPRISES ENGAGED WITHIN ITS TERRITORIES IN COMMERCIAL,

INDUSTRIAL, FINANCIAL AND OTHER BUSINESS ACTIVITIES OTHER
THAN THOSE DESCRIBED IN PARAGRAPH 2 OF THIS ARTICLE, IF
IT DETERMINES THAT SUCH LIMITATIONS ARE NECESSARY:

- (A) TO PREVENT MONOPOLIES OR COMBINATIONS IN
RESTRAINT OF TRADE; OR
- (B) TO AVOID CREATION OF EXCESS CAPACITY WITHIN A
PARTICULAR AREA OF ECONOMIC ACTIVITY.

WITH RESPECT TO ANY SUCH LIMITATION, EACH PARTY SHALL ACCORD
TO NATIONALS AND COMPANIES OF THE OTHER PARTY TREATMENT NO
LESS FAVORABLE THAN THAT ACCORDED TO NATIONALS AND COMPANIES
OF ANY THIRD COUNTRY.

4. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE,
NATIONALS AND COMPANIES OF EITHER PARTY SHALL BE ACCORDED
NONDISCRIMINATORY TREATMENT WITH RESPECT TO THE ESTABLISHMENT
OR ACQUISITION OF INTERESTS IN ENTERPRISES ENGAGED IN COM-
MERCIAL, INDUSTRIAL, FINANCIAL OR OTHER BUSINESS ACTIVITIES
WITHIN THE TERRITORIES OF THE OTHER PARTY.

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MOSCOW FOR L, ALDRICH

5. ENTERPRISES ESTABLISHED OR ACQUIRED BY NATIONALS
AND COMPANIES OF EITHER PARTY WITHIN THE TERRITORIES OF

THE OTHER PARTY AND WHICH ARE OWNED OR CONTROLLED BY SUCH NATIONALS AND COMPANIES SHALL BE PERMITTED FREELY TO CONDUCT THEIR ACTIVITIES UPON TERMS NO LESS FAVORABLE THAN LIKE ENTERPRISES OWNED OR CONTROLLED BY NATIONALS OF SUCH OTHER PARTY OR OF ANY THIRD COUNTRY. NEW LIMITATIONS IMPOSED BY EITHER PARTY UPON THE EXTENT TO WHICH ALIENS ARE ACCORDED NONDISCRIMINATORY TREATMENT WITH RESPECT TO THE CONDUCT OF ENTERPRISES WITHIN ITS TERRITORIES SHALL NOT BE APPLIED TO ENTERPRISES OWNED OR CONTROLLED BY NATIONALS OR COMPANIES OF THE OTHER PARTY THAT ARE ENGAGED IN SUCH ACTIVITIES THEREIN AT THE TIME SUCH NEW LIMITATIONS ARE ADOPTED.

6. NATIONALS AND COMPANIES OF EITHER PARTY SHALL BE PERMITTED TO ENGAGE TECHNICAL EXPERTS, EXECUTIVE PERSONNEL, AND OTHER SPECIALIZED EMPLOYEES OF THEIR CHOICE, REGARDLESS OF NATIONALITY.

7. EXCEPT AS PROVIDED IN ARTICLE 5 OF THIS TREATY, NATIONALS AND COMPANIES OF EITHER PARTY MAY NOT BE REQUIRED TO DISPOSE OF ENTERPRISES WHICH THEY HAVE ESTABLISHED OR LIMITED OFFICIAL USE

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ACQUIRED, OR OF ANY INTEREST THEREIN; BUT EITHER PARTY MAY IMPOSE SUCH A REQUIREMENT AS A CONDITION TO THE RECEIPT OF FINANCIAL INCENTIVES, BENEFITS AND SUBSIDIES FROM THE GOVERNMENT OF SUCH PARTY.

8. EACH PARTY RESERVES THE RIGHT TO LIMIT THE EXTENT TO WHICH ALIENS MAY ENGAGE IN PROFESSIONS WHICH, BECAUSE THEY INVOLVE THE PERFORMANCE OF FUNCTIONS IN A PUBLIC CAPACITY OR IN THE INTERESTS OF PUBLIC HEALTH AND SAFETY, ARE STATE-LICENSED AND RESERVED BY LAW TO NATIONALS OF SUCH PARTY. UNQUOTE
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